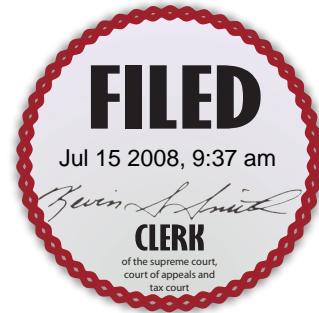


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF C.B.,)

A.B., MOTHER, and)
M.H., FATHER,)

Appellants-Respondents,)

vs.)

ADAMS COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 01A02-0801-JV-3

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0707-JT-4

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.B. (“Mother”) and M.H. (“Father”) appeal the trial court’s order that terminated their parental relationships with their son, C.B.

We affirm.

ISSUE

Whether evidence supports the trial court’s determination that the conditions which led to the placement of C.B. with the Adams County Department of Child Services (“DCS”) would not be remedied, that it was in C.B.’s best interest that the parental relationships be terminated, and that there was a satisfactory plan for the care and treatment of C.B.

FACTS

C.B. was born on February 6, 2004. Thereafter, C.B. and Mother resided with Mother’s parents in Huntington, but Mother was “in and out of jail.” (Tr. 27). Father was incarcerated when C.B. was born.¹ From the time of C.B.’s birth until the summer of 2006, Father saw C.B. “maybe 20” times, when Father’s mother took C.B. to wherever Father was incarcerated.

In mid-June of 2006, Mother and C.B. moved with her boyfriend, Nathaniel Rambo, to Decatur, Indiana. On July 6, 2006, DCS received a report of possible physical abuse of C.B. The DCS investigation found that C.B. had suffered a broken arm, approximately one hundred bruises on his body, and a discolored and swollen face. The

¹ Father was incarcerated from mid-2003 through the time of the trial.

broken arm required surgery; and subsequent evaluation revealed two previously broken bones and C.B.'s rotting teeth.

Detention of C.B. was authorized on July 7, 2006. On July 11, 2006, C.B. was placed in a licensed foster-care home. Beginning in August of 2006, C.B. was counseled by Christine Shestak, a licensed mental health counselor. A fact-finding hearing was held on September 20, 2006, and C.B. was found to be a Child in Need of Services ("CHINS").²

On November 22, 2006, a dispositional hearing was held in the CHINS matter. The trial court received evidence that on October 14, 2006, Mother had given birth to K.R., who tested positive for controlled substance, and the child had been detained.³ The trial court ordered Mother and Father, as part of the parent participation plan, to complete certain evaluations and programs and to establish appropriate income and housing.⁴

On July 11, 2007, DCS filed a petition for involuntary termination of the parents' relationships with C.B. At that time, the trial court scheduled the matter for trial on October 30-31, 2007. On October 18, 2007, Father filed a petition for relative placement,

² With respect to C.B.'s injuries, on July 7, 2006, the State charged both Mother and Rambo with two class B felony offenses: battery resulting in serious bodily injury to a person less than fourteen years of age, and neglect of a dependent resulting in serious bodily injury. On September 14, 2007, Mother pleaded guilty to neglect of a dependent resulting in bodily injury, a class C felony.

³ K.R. was allegedly fathered by Rambo.

⁴ Specifically, Mother and Father were to complete a psychological evaluation and follow all recommendations resulting from the assessment; complete substance abuse counseling and submit to random drug screens; cooperate with any recommended home-based services; complete parenting skills evaluation and follow all recommendations resulting therefrom; maintain a source of income and suitable housing; maintain appropriate health care for C.B.; attend and complete anger management counseling; cooperate with all services recommended; and attend all supervised visitations. Father, however, was ordered to comply with these provisions "upon release from incarceration and prior to extended visitation with or even custody of the child." (Ex. 4 (Order on Dispositional Hearing of November 22, 2006)).

asserting that various relatives were “willing and able to accept temporary placement” of C.B. until his “release[] from incarceration in February, 2008.” (App. 89, 90). DCS filed an objection. The trial court determined to consider relative placement at the trial.

Evidence was heard October 30-31, 2007. Shestak testified that she had counseled C.B. weekly for more than a year. She testified that his diagnoses were post traumatic stress disorder (“PTSD”)⁵ and reactive attachment disorder.⁶ Shestak testified that C.B. exhibited a “lack of trust in anybody” and “fear of any adult,” and was particularly “terrified of all men.” (Tr. 156, 164). Shestak described nightmares and violent behavior by C.B. after his early counseling sessions and after his visitations with his parents.⁷ Shestak found C.B. to have an “insecure attachment relationship” with Mother, and noted that he had recently become “very anxious” and broken out in hives upon hearing her name. (Tr. 173, 161). Shestak also testified that C.B. did not have “an attachment relationship” nor “a relationship with” Father, and was “not open to a relationship with his father. He fears him. He is afraid of him. He has lots of anxiety” about Father. (Tr. 173, 172, 174). Shestak found C.B. to be an “emotionally fragile” child, who had “a multitude of needs and will need counseling for the rest of his life.” (Tr. 165, 167).

⁵ Shestak testified that a PTSD diagnosis is based on “two very important conditions”: that “the person has either witnessed or experienced a serious event such that they thought that they would die or be very seriously hurt,” and that the person felt “helpless to prevent what was happening.” (Tr. 159).

⁶ Shestak testified that this disorder results when a child has suffered a lack of nurturing and responsive care in its first two years of life. It has an “insecure attachment” to the caregiver who cannot be trusted to meet his basic needs. (Tr. 155). “[R]eactive attachment disorder is the opposite of a secure attachment,” which the healthy child has to its caregiver. (Tr. 156).

⁷ During the fifteen months between his removal and the trial, C.B. had two visitations with Mother, and either five or six visitations with Father.

Shestak believed that it was in C.B.'s best interest for the parents' rights to be terminated, and for C.B. to remain in the foster home – where he had come to “feel[] safe” and “love[] as much as he can love.” (Tr. 167).

Theresa Sipe, a licensed foster parent for twenty-three years, testified that C.B. had been in her care since he came to her home “withdrawn, scared, very fearful” and “severely battered” in July of 2006. (Tr. 105, 102). Sipe further testified that after his visitations with Father, C.B. was “very unsettled,” “agitated” and had nightmares. (Tr. 107, 108). Sipe also testified that C.B. had a nightmare after his last visitation with Mother, and that C.B. told her “several times that mommy hurt him.” (Tr. 110). According to Sipe, after more than a year in her home, C.B. was very gradually making improvement.

Father admitted that he had been incarcerated for eight of the past ten years; that his juvenile history included a theft charge at age eleven, a burglary, and additional thefts; and that his adult history included residential entry, a burglary, two batteries, disorderly conduct, and resisting law enforcement, as well as the dealing in cocaine offense for which he was currently incarcerated. Father also admitted that he had failed to comply with a court-ordered parental participation plan. Father testified that he had taken two semesters of college courses while in prison, as well as participating in substance abuse and anger management programs.⁸ Father testified that he was “certain”

⁸ These programs were completed before C.B.'s detention by DCS, *i.e.*, before the trial court's parental participation plan order.

to be released on May 11, 2008, (Tr. 204),⁹ and that upon release, his goals were to “finish [his] college, get a job, and get [his] son.” (Tr. 220). Father believed that any problems C.B. had were a result of DCS “keeping him away from” his family. (Tr. 227).

Mother testified that she was currently incarcerated, after pleading guilty to criminal neglect of C.B., and not scheduled for release until September of 2011. Mother conceded she was “not an option for placement” of C.B.; however, she supported his placement with either Father, her mother, or relatives “on either side . . . as long as it’s family.” (Tr. 249, 250). Mother admitted that she had used drugs during her pregnancy with the child born three months after C.B.’s removal and had twice tested positive for drugs since C.B.’s removal. Mother also admitted that she failed to comply with the court-ordered parental participation plan. Mother confirmed that Father had failed to pay court-ordered child support and birthing expenses for C.B.¹⁰

Caseworkers for DCS testified that it was in C.B.’s best interest that the parent-child relationships be terminated, and that its long-term permanency plan for C.B. was adoption. Testimony from DCS staff also provided specific reasons for its determination to not recommend permanent placement of C.B. with any of the suggested relatives.

Beth Webber, attorney at law, was appointed guardian ad litem for C.B. on July 17, 2007. She testified that she had attended all case conferences, and reviewed all DCS records, medical records, and counseling reports as to C.B.; information as to Mother and

⁹ According to the Department of Correction, Father is still incarcerated, with an “earliest possible release date” of August 15, 2008. http://www.in.gov/apps/indcorrection/ofs/of?previous_page=1&detail=973611.

¹⁰ Father confirmed that he had paid nothing in this regard, attributing the failure to his incarceration.

Father; and the voluminous email correspondence between the foster mother and Shestak as to specific behavior issues with C.B. She testified that the evidence showed C.B. had been “severely abused and injured . . . over a period of time” and “profoundly neglected.” (Tr. 261). She expressed “huge concern” that none of the relatives “intervened . . . to protect this child.” (Tr. 262). She testified that C.B. had “been devastated by not only the abuse and negative treatment but by the lack of nurturing that he received,” had behavioral issues as a result, and would “be a very provocative child for a considerable amount of time because of the disorders that he has.” (Tr. 263, 265). Webber also testified as to why she would not recommend placement of C.B. with various relatives. She testified that Father had never “put himself in a position to be a parent to” C.B., and that for C.B. to wait for Father to be released and then an additional six to twelve months for Father to possibly achieve the stability necessary was “not fair” to C.B. (Tr. 275). She further testified that C.B. did not “know [Father],” that he needed “consistency and stability,” and that his particular emotional fragility rendered him unable to adapt to change. (Tr. 273). She opined that it was in C.B.’s best interest that the parental rights of both Mother and Father be terminated.

On November 20, 2007, the trial court issued its findings of fact and conclusions of law. Thirteen pages of the order enumerate 157 findings of fact, many reflecting the evidence noted above.¹¹ The trial court then concluded as follows:

¹¹ Neither Mother nor Father challenge any of the trial court’s findings as unsupported.

5. [Mother] has demonstrated an inability to adequately meet the basic needs of her child, protect her child from violence, and she is incarcerated for approximately the next four years.
6. [Mother] has demonstrated a pattern of not completing services she was ordered to participate in.
7. [Mother] has demonstrated a pattern of inability to adequately parent her child.
8. There is a reasonable probability that because of [Mother]'s inability to adequately meet the basic needs of her child, her inability to protect her child from violence, her pattern of not completing services she was ordered to participate in, her pattern of inability to adequately parent her child, and her incarceration for approximately the next four years, that the conditions that resulted in the child's removal from the home have not been and will not be remedied.
9. [Father] has been incarcerated continuously since [C.B.] was in utero and will remain incarcerated until May of 2008.
10. [Father] has demonstrated an inability to adequately meet the basic needs of his child and protect his child from violence.
11. [Father] has not paid child support as ordered by the Huntington Circuit Court because of his current incarceration, has a history of criminal offenses as an adult that resulted in incarceration for approximately eight of the past ten years, including burglary, residential entry, dealing in cocaine, and battery, has a history of illegal drug use, has no pattern of stable housing outside of prison, and has a juvenile criminal record.
12. There is a reasonable probability that because of [Father]'s term of incarceration until May of 2008, and his inability to adequately meet the basic needs of his child and protect his child from violence that the conditions that resulted in this child's removal from the home have not been and will not be remedied.
13. There is a reasonable probability that because of [Father] not paying child support as ordered by the Huntington Circuit Court because of his current incarceration, his history of criminal offenses as an adult that resulted in incarceration for approximately eight of the past ten years, including, burglary, residential entry, dealing in cocaine, and battery, his history of illegal drug use, his pattern of no stable housing outside of

prison, and his juvenile criminal record that the reasons for the child's placement outside of the home of the parents will not be remedied.

14. Termination of the parent-child relationship between the child's father . . . and the child's mother . . . and the child is in the best interest of the child.

15. The [DCS] plan of adoption for the child is a satisfactory plan of care and treatment for the child.

(App. 168-69).

DECISION

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002) (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied, trans. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

The appellate court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
- (B) There is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) Termination is in the best interests of the child; and
- (D) There is a satisfactory plan for the care and treatment of the child.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

Mother's Arguments

Mother first argues that the trial court erred when it concluded that the conditions which led to the removal have not been remedied because Rambo, "the person responsible for the injuries to C.B.," has been "convicted and is incarcerated," she "no longer has contact with him," and she "is not a threat to her son." Mother's Br. at 3. We cannot agree.

The evidence did not unequivocally establish that the sole cause of C.B.'s physical injuries was due to Rambo. Moreover, even if that were true, it remains that (as the trial

court concluded), Mother failed to protect C.B., for which she was formally charged and convicted. Further, C.B. also suffered from severe neglect, resulting in his reactive attachment disorder, a condition which develops when a child's caregiver fails to provide for his basic needs and to nurture him. The trial court concluded that Mother had failed to adequately meet C.B.'s basic needs and would not be able to do so for at least the next four years. The evidence supports this conclusion.

Mother also argues that the trial court erroneously concluded that DCS had a satisfactory plan for C.B.'s continued care and treatment because "there are no adoptive parents being considered." Mother's Br. at 3. Mother cites to no authority establishing this as a prerequisite, and we do not find the trial court's conclusion to be erroneous.

Webber, the GAL, noted that it was possible that C.B.'s foster parents would seek to adopt him – as they were considering it. She further testified that the general policy was not "to talk about adoption until termination occurs." (Tr. 275). To terminate the parent-child relationship, the trial court must find that there is a satisfactory plan for the care of the child. I.C. § 31-35-2-8(a). The plan "need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated." *In re D.D. v. Marion County Office of Family and Children*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied*. Testimony established that the plan was for C.B. to continue being counseled by Shestak and to remain in the care of the foster parents, who were considering adopting him. This evidence is sufficient to support the trial court's conclusion that there was a satisfactory plan for C.B.'s care and treatment.

Father's Arguments

Father first argues that the trial court erred when it found the reasons for C.B.'s removal would not be remedied. Specifically, he argues as follows:

The reasons for C.B.'s initial removal were remedied with the convictions of [Mother] and Nathaniel Rambo for having injured him. The reason for his continued removal from [Father] were [sic] incarceration. This problem will correct itself with the passage of time: [Father] is due to be released from prison in May, 2008.

Father's Br. 11. We are not persuaded.

As already discussed, in addition to his significant physical injuries, C.B. suffered from severe neglect. Father's own behavior put him in a position to be unable to parent C.B.; hence, he can also be found to be a cause of C.B.'s reactive attachment disorder. *See also Castro v. Office of Family and Children*, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006) (father "unable to remedy" conditions that led to child's removal due to father's incarceration). Further, at the time of trial, C.B. was not yet four years-old. He had never been in Father's care, and had little contact with him. Father had predicted his release in May of 2008, but it now appears his earliest possible release is August of 2008. Testimony indicated that after being released, Father would require at least six months to achieve the stability necessary to begin any transitional process toward care of C.B. Thus, the likelihood was that Father would not be in a position to even begin the process of gaining custody until after C.B. reached the age of five (on February 6, 2009). Given C.B.'s special needs, we do not find that the damage he has suffered from neglect would be remedied by trying to establish a speculative parent-child relationship with a father he has never known.

Father analogizes the circumstances here to those of *Rowlett v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. Rowlett’s children were removed from their mother’s care at a time when he was trying to establish paternity and obtain their custody. Shortly after their removal, however, Rowlett was arrested. The Office of Family and Children had not offered him any services to address his deficiencies as a parent, and Rowlett remained incarcerated while the children were found to be CHINS and proceedings were initiated to terminate parental rights. The trial court set trial on the termination petition for April 12, 2005. Rowlett moved for a continuance, asserting that his release was scheduled just six weeks after the scheduled date. The trial court denied his motion, proceeded to trial on April 12, 2005, and terminated his parental rights on April 21, 2005. We held that the trial court erred in denying Rowlett’s motion for a continuance, stating that it should have reset the trial “after Father was given a sufficient period following his release to demonstrate his willingness and ability to assume parental duties.” 841 N.E.2d at 620. Rowlett also argued that the trial court erred when it found the conditions that led to the children’s removal would not be remedied. We noted the evidence of Father’s efforts, during incarceration, “to better himself as a person and a parent” by completing college courses as well as anger management and substance abuse programs. *Id.* at 622. We also noted that Father “had secured employment . . . after his release.” *Id.* Specifically citing Father’s expression of interest in “maintaining a parental relationship” as well as his positive accomplishments while incarcerated and commitment to future participation in programs and services, we concluded that the evidence did not establish the reasonable

probability that the conditions which resulted in the children's removal would not be remedied or that termination was in the best interests of the children. *Id.* at 623.

We find a critical distinction between Father's circumstances and those of *Rowlett*. Father, herein, was not scheduled to be released within six weeks of the trial. Rather, Father asserted to the trial court that he was scheduled to be released in six months.¹² Further, nothing in *Rowlett* indicates that either of his children suffered from significant special needs. Moreover, the facts in *Rowlett* indicate that he had had a healthy, ongoing relationship with his children, and that during his incarceration

Father sent C.R. and A.R. letters, and they sent him pictures which they had drawn. Father also communicated with the children through telephone calls. When he would call, the children were happy to talk to him, telling him that they loved him and asking when he was coming home.

Id. Here, there was no such relationship between Father and C.B. Accordingly, we do not find *Rowlett* dispositive.

Father next argues that DCS failed to show that termination was in C.B.'s best interests because despite his "severe conditions," Father "has a myriad of relatives willing to take complete or temporary custody of C.B." Father's Br. at 14. Father offers no authority for the proposition that because a relative is "willing" to take custody, it is not in the best interest of a child to have the parental relationship with an unavailable parent terminated.

¹² "At the time of the dispositional hearing, the children had been in the care of the maternal grandmother for nearly three years, and the evidence presented at the hearing demonstrates that the children are thriving under the arrangement." *Rowlett*, 841 N.E.2d at 623

DCS personnel, Shestak, and Webber all testified as to why various proposed relatives were not determined to be appropriate for permanent placement of C.B. The trial court made findings that reflected it accepted these as having an acceptable basis for not finding the respective individuals appropriate. Father's argument challenges the credibility of the witnesses and their opinions. However, we do not reweigh the evidence or assess witness credibility. *See R.S., 774 N.E.2d at 930.*

When determining whether it is in the child's best interest, we look at the totality of the evidence. *Matter of A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). Further, we subordinate the interests of the parents to those of the child. *R.S., 774 N.E.2d at 930.* C.B. has suffered physical abuse and severe neglect that have rendered him extremely fragile emotionally. Intensive efforts have resulted in only gradual improvement by C.B. after more than a year. C.B. is afraid of Father and has no attachment to him. Further, evidence established that C.B. has substantial needs: a sense of security, a feeling of safety, long-term consistency and stability. Evidence also established that these were being provided C.B. in the foster home and with his continued counseling. The evidence supports the trial court's conclusion that DCS established that Father cannot provide for these needs, and it was in the best interests of C.B. for his relationship with Father to be terminated.

Finally, Father argues that there was no satisfactory plan for C.B.'s care and treatment because any plan of adoption was "more of a promise of future hopes than a plan" in that there were no proposed adoptive parents. Father's Br. at 17. As we discussed above, the required plan for treatment of the child "need not be detailed, so

long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *D.D.*, 804 N.E.2d at 268. Testimony established that the plan was for C.B. to continue being counseled by Shestak and to remain in the care of the foster parents, who were considering adopting him. This evidence is sufficient to support the trial court’s conclusion that there was a satisfactory plan for C.B.’s care and treatment.

Affirmed.

NAJAM, J., and BROWN, J., concur.